

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 54-030-14-1-7-00079-16
Petitioner: Bryan Snook
Respondent: Montgomery County Assessor
Parcel No.: 223-20120-85
Assessment Year: 2014

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Petitioner initiated his appeal with the Montgomery County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130 dated May 29, 2015. On December 9, 2015, the PTABOA issued its Notification of Final Assessment Determination. Petitioner then filed a Form 131 petition on January 19, 2016.
2. Petitioner elected to have his appeal heard under the Board’s small claims procedures. Respondent did not elect to have the proceedings removed from those procedures.
3. On June 15, 2016, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing.
4. The following people testified under oath:
 - Bryan Snook, Petitioner,
 - Michael Gaby, Petitioner’s CPA,
 - Sherri Bentley, Montgomery County Assessor.

Facts

5. The business personal property in question is located at 1540 South Washington Street in Crawfordsville. Neither the Board nor the ALJ inspected the property.

6. The PTABOA determined an assessed value of \$192,330. Petitioner's Form 131 petition seeks an assessment of \$47,470.¹

Record

7. The official record for this matter is made up of the following:

- a. A digital recording of the hearing,
- b. Exhibits:²

Respondent Exhibit A: Business Tangible Personal Property Return Form 104 and Form 103-Long, dated May 15, 2014,
Respondent Exhibit B: Amended Business Tangible Personal Property Return Form 104 and 103-Long, dated May 29, 2015,
Respondent Exhibit C: Notification of Final Assessment Determination – Form 115,

Board Exhibit A: Form 131 petition and attachments,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,

- c. These Findings and Conclusions.

Administrative Review and the Parties' Burdens

8. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
9. The taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis”).
10. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

¹ Respondent Exhibit B shows Petitioner's amended business personal property return seeks an assessed value of \$62,600.

² Petitioner did not submit any exhibits.

Summary of the Contentions

11. The relevant facts are not in dispute. For the 2014 assessment, Petitioner filed his original personal property return on May 15, 2014. *Gaby & Bentley testimony; Resp't Ex. A.*
12. Petitioner received his tax statement the following year and, because of a dramatic increase in his taxes, he claims to have discovered a clerical error on the original return.³ Petitioner then attempted to file an amended return on May 29, 2015. *Gaby & Bentley testimony; Resp't Ex. B.*
13. Petitioner claims that, under the procedural rules, a taxpayer is effectively only given two weeks to amend a personal property return instead of one year because the taxpayer is not normally aware of the problem with their original return until they receive their tax bill. *Gaby testimony.*
14. Petitioner admitted, and Respondent agrees, that Petitioner's amended return was not timely filed. Specifically, an amended return must be filed within twelve months of the filing date for the original return. *Gaby & Bentley testimony; Resp't Ex. A & B.*
15. Respondent claims to lack the authority to waive the relevant filing deadlines. *Bentley testimony.*

Conclusions of Law

16. Indiana's personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs in Indiana on March 1 of a year must file a personal property tax return on or before May 15 of that year unless the person obtains a timely extension of time. Ind. Code § 6-1.1-3-7; 50 IAC 4.2-2-2.
17. Additionally, Ind. Code § 6-1.1-3-7.5 states that a taxpayer may file an amended return not more than twelve months after the filing date for the original return if the taxpayer is not granted an extension, or not more than twelve months after the extension date for the original return if the taxpayer is granted an extension.
18. Here, the parties agree that the original return was timely filed on May 15, 2014. They also agree Petitioner filed an untimely amended return on May 29, 2015. Thus, in asking

³ Petitioner claims he included leasehold improvements that were taxed in a "different form." He also claims he should not be taxed on property that does not exist. *Gaby testimony.*

the Board to accept an untimely filed amended return, Petitioner is, in effect, asking the Board to waive the filing deadline. The Board is sympathetic to the consequences of Petitioner's failure to timely file an amended return. Nevertheless, the use of the word "shall" by the General Assembly, when setting forth the filing deadlines for personal property returns under Ind. Code §§ 6-1.1-3-7, 6-1.1-3-7.5, and 6-1.1-1-7, means that filing such a return on or before the twelve month deadline after the original return is filed is mandatory if an extension is not obtained. *Truedell-Bell v. Marion County Treasurer*, 955 N.E.2d 872, 875 (Ind. Tax Ct. 2011). Further, Petitioner provided the Board no legal authority on which to base this request or on which the Board could waive the untimely filing of the amended return.

19. Petitioner did not timely file his amended personal property return and, as such, Respondent properly denied the amended return.

Summary of Final Determination

Petitioner admitted his amended personal property return was not timely filed. The Board lacks the authority to waive the relevant filing deadlines. The Board therefore affirms Respondent's decision denying Petitioner's amended personal property return.

ISSUED: September 9, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.